Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

Christy and Steven Jackson,
Petitioners
v.
Sandi Tangreen,
Respondent

On Petition For Writ Of Certiorari
To The Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions

The following questions arise from a grandparent visitation court order which orders visitation over the objections of a fit natural mother and a fit adoptive father.

1. Is Arizona's third party visitation statute, A.R.S. §25-409, an unconstitutional infringement on a fit parent's right of custody and control, either facially or applied?

2. Does the lack of recognition of a stepparent adoption under ARS §8-117 constitute a violation of equal protection under the US Constitution?

3. Did the Arizona Court of Appeals, Division I, fail to apply the reasoning of *Troxel v. Granville* in its review of *Jackson v. Tangreen* and thereby fail to provide due process guaranteed to the Jacksons by the U.S. Constitution?

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Citations of the Published and Unpublished Opinions in this Case

2/24/94 Cristy Jackson (Thon) files for dissolution of marriage to Robert Thon in Yavapai County Superior Court.

11/21/94 Decree of Dissolution granted

2/1995 Cristy Jackson married to Steve Jackson

4/14/97 Sandi Tangreen filed Petition for Grandpartent Visitation

6/17/97 Order to Show Cause Hearing held by Judge Brutinel, visitation ordered

2/9/98 Steve Jackson files petition to adopt the children, natural Father consents to his parental rights being severed

7/2/98 Sandi Tangreen files petition for continuation of grandparent visitation rights

7/17/98 Hearing on Tangreen Petition heard by Judge Hinson

8/11/98 Order of Adoption Entered by Judge Brutinel

2/18/99 Tangreen files Petition for Order to Show Cause asking for expanded visitation to that of Arizona "Guidelines" for non-custodial parent and alleges that Jacksons have frustrated her efforts to have visitation.

3/2/99 Order to Show Cause Hearing; denied visitation during spring break and ordered visitation to remain constant.

3/5/99 Jackson file motion for reconsideration of Judge Hinson's 7/17/98 ruling

6/21/99 Court modifies visitation order but continues visitation over parent's objections

8/19/99 Formal order entered (see Appendix)

9/14/99 Jacksons file notice of Appeal (1 CA-CV 99-0542)

12/26/00 Division I, Arizona Court of Appeal issues opinion (see Appendix)

1/25/01 Petition the AZ Supreme Court for review

5/30/01 Petition for review denied by the AZ Supreme Court (see Appendix)

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Statement of Jurisdiction

On May 30, 2001, the Arizona Supreme Court denied without comment, to review a published earlier opinion by Division I of the Arizona Court of Appeals in the case of *Christy and Steven Jackson v. Sandi Tangreen*, CV-01-0036-PR. The petition for review initially resulted from an opinion that was entered by the Arizona Court of Appeals, Division One, in the case of *Jackson v. Tangreen*, No. 1 CA-CV 99-0542 (see full text of this opinion contained n the Appendix), which was in response to an appeal from an order by the Superior Court in the same matter, DO 94-0203 (see in the Appendix, Order by the Honorable Judge Howard D Hinson, Superior Court of Yavapai County, Arizona). The United States Supreme Court has jurisdiction in this matter under rule 11(c).

> "(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or[and] has decided an important federal question in a way that conflicts with relevant decisions of this Court." [Added by Petitioner to clarify the claim]

It is Petitioners' contention that this action has violated their Constitutional right to Due Process under the 14th Amendment of the U.S. Constitution, and should be reversed. It is clear that, at least as far as the instant case, no Ari-

zona court is willing to defend the right of a parent to custody and control of his children. Without intervention in this matter by the United States Supreme Court, this right effectively does not exist in Arizona for the instant case and other cases within Arizona.

Notice of Service Pursuant to Rule 29

This document has been served by mail on the attorney of record for the opposing party and attempted personally on the opposing party as described in the proof of service submitted herewith. In addition, since the constitutionality of a state statute may be in question, this was also served by mail on the Attorney General of the State of Arizona pursuant to 28 U. S. C. § 2403(b). Proof of service accompanied this document when it was filed with the United States Supreme Court.

Material Facts of the Case

Cristy Ann (Thon) Jackson and Robert Ray Thon were married on July 4, 1992. There were two children born to the marriage, Dexter Thon, born on January 13, 1992, and Kabrina Thon, born on March 23, 1993. Cristy Ann (Thon) Jackson filed a Petition for Dissolution with the Yavapai County Superior Court on February 24, 1994. A Decree of Dissolution was entered by Judge Hancock on November 21, 1994. In February of 1995, Cristy married Steve Jackson, an equipment operator and volunteer EMT for the Phelps Dodge Copper mine in the community of

Bagdad, Arizona.

On April 14, 1997, the minor children's' genetic paternal grandmother, Tangreen, filed a Petition for Grandparents' Visitation. Following hearing on June 17, 1997, Judge Brutinel entered his Order granting grandparents visitation in magnitude well beyond the guidelines for the State of Arizona contained in *Graville v. Dodge I,* 195 Ariz. 119, 985 P.2d 604 (AZ App. Div. 1 01/28/99 cert denied).

On February 9, 1998, Steven Jackson, the husband of Cristy Ann (Thon) Jackson, and stepfather of the minor children, filed a Petition To Adopt the minor children. Within that Petition it stated that the natural father of the minor children, Thon, consented to the adoption, and a consent to the adoption from the natural father accompanied the Petition. Following hearing, Judge Brutinel signed an Order of Adoption on August 11, 1998.

On July 2, 1998, Tangreen filed a Petition For Continuation Of Grandparents' Rights. In Response, on July 14, 1998, the Jacksons" objected to the continued grandparents visitation, arguing that given the pending adoption (then scheduled for August 11, 1998), it would be inappropriate to schedule visitation, as the grandparents' visitation should be terminated, by statute, with the signing of the Order of Adoption. It was further argued that Arizona law dictated that once the natural father had consented to the adoption that consent could not be revoked and that, therefore, there was nothing

preventing the adoption from occurring and the grandparents' visitation, thereby, terminated.

On July 17, 1999, hearing was held before Judge Hinson (excerpts from the record contained in the Appendix). At that time, the Court took testimony from Cristy Ann (Thon) Jackson and from Tangreen, and entered its Order that Tangreen could pick up the minor children and have visitation with them beginning on July 20, 1998 and returning them no later than 5:00 PM on August 10, 1998.

On February 18, 1999, a Petition for Order to Show Cause was filed by the Appellee, asking for "guidelines" visitation ("guidelines" refers to visitation normally granted in divorce cases, not grandparent visitation cases). The Order to Show Cause Hearing was held on March 2, 1999. At that time, Appellants advised the Court that a Motion for Reconsideration had been filed with the Court, but had been filed under the adoption case docket number rather than the appropriate docket number. The Court, at that time, established a schedule for the filing of Response and Reply to the Motion for Reconsideration, denied Tangreen visitation during spring break, denied visitation with Tangreen pursuant to the "specific visitation request" of the Petition for OSC, and directed that Tangreen's visitation would remain the same as previously ordered. Finally, the Court directed that the Appellants and Appellee were to communicate with each other in regard to Summer visitation.

On March 25, 1999, Appellants' Motion For

Reconsideration was "re filed" under the appropriate docket number. However, on April 23, 1999, Appellants filed a letter with the Court they had received from Thon, and asked that the Court reconsider its grant of visitation to Tangreen. Within that letter Mr. Thon advised that he wanted his children to have a "normal, structured, pleasant childhood," which he did not feel they would have if Tangreen remained involved in their lives. Mr. Thon pointed out that Tangreen had a grandchild in Montana which she had made no effort to see or be a part of his life, and Thon did not believe there was a logical reason for the Court to uproot the minor children from their home in Bagdad, Arizona and be taken away from their social and sporting events which he recognized as being very important to them. Mr. Thon stated specifically, that he did not believe Tangreen had ever concentrated her efforts on what was best for the children. Mr. Thon reported that during prior visitation, when the children wished to be with their natural father, Tangreen had locked them in a trailer. Thon stated that Tangreen had a history of being both physically and mentally abusive toward himself and his sister and that Tangreen was a threat to his children's safety. Mr. Thon related that Tangreen's husband, not Thon's birth father, abused prescription narcotic drugs to the extent that he would pass out at the dinner table with his fork halfway to his mouth and in the middle of conversations. Mr. Thon was unequivocal that he did not want his natural children to have visi-

tation with his mother; their grandmother.

On June 21, 1999, Judge Hinson issued a lengthy Minute Entry denying reconsideration of his prior orders and allowing visitation to continue to Tangreen, stating that "implicit" within Judge Brutinel's Order establishing a visitation in Tangreen was a finding by the Court that such visitation was in the children's best interests, and that if the Appellants had disagreed with the continuation of visitation in Tangreen, they should have raised it to Judge Brutinel at the time of the adoption. The Court's formal Order, contained in the Appendix, was signed on August 20, 1999.

Argument for Question 1 and 3:

1. Is Arizona's third party visitation statute, A.R.S. §25-409, an unconstitutional infringement on a fit parent's right of custody and control, either facially or applied?

3. Did the Arizona Court of Appeals, Division I, fail to apply the reasoning of Troxel v. Granville in its review of Jackson v. Tangreen and thereby fail to provide due process guaranteed to the Jacksons by the U.S. Constitution?

Division I of the Arizona Court of Appeals in finding for the Appellee in the instant case failed to apply the analysis of *Troxel v. Granville,* 530 U.S. 57 (2000) despite a more than adequate invitation by the Petitioner to do so in their open-

ing brief. Instead it launched into an extensive and in the Petitioner's opinion a substantially flawed analysis of the facial constitutionality of one of two Arizona grandparent visitation laws.: ARS § 25-409, under the authority of which this action has been taken. A companion statute extends visitation to nearly all third parties that can claim a relationship with children, ARS § 25-415, which was not discussed and is not discussed herein other to note that this law disputes many claims that Arizona law is narrowly constructed. The fact remains that the Court of Appeals, other than noting that the parents were fit, largely ignored the analysis of Troxel. It ignored any determination of whether the instant case was merely the opinion of the judge versus that of fit parents. Also it ignored that the Superior Court from which this action springs swept in the new adoptive father, Steven Jackson, to court ordered interference with parental rights without even the slightest trappings of due process. We proceed through what the Petitioners feel is a more proper application of the analysis stated in *Troxel v. Granville.*

Parental Fitness

The Appeals Court (see ¶13 of the Appeals Opinion in the Appendix) , took judicial notice of that "there is a presumption that fit parents act in the best interests of their children" (from *Troxel v. Granville*). In this case, as in *Troxel* no

one has alleged and no court has found that either Cristy Jackson or Steve Jackson are anything but exemplary parents. Furthermore the State of Arizona has conducted as a matter of public policy and law an extensive background investigation associated with their adoption. While these investigations are sealed records the undisputed fact that the adoption was granted by an Arizona Superior Court is clear positive affirmation that the Petitioners are fit parents. Additionally Judge Hinson in his comments at the close of the hearing on July 17, 1998 reflected his opinion on the parental fitness when he stated. "you two [the Petitioners] are very, very nice and very decent people, and I think that you are coming at this from a parental angle and that parental angle is what is best for them [the children]." (See the transcript in the Appendix, material in brackets added for clarity) There can be no question that this case involves fit parents in an intact family situation.

Order based on Personal Opinion

The Order entered by Judge Hinson gave the thinnest reasoning possible for his order. His reasoning is limited to the following statement in the order (contained in total in the Appendix),

> "The rights of grandparental visitation set forth specifically herein below will enure to the benefit of these children by allowing

> them to continue to enjoy their association with a paternal grandmother who demonstrates her caring for these children by the investment of the time and effort required to visit them. Acceptance of this visitation by the mother and adoptive father of these children will demonstrate to them that their parents love and accept the entirety of their identities, even that part which consists of their relationship with their paternal grandmother."

Further in the court transcript of the hearing in chambers that produced this order the judge states,

> "But, again, you get back to the concept does this addition that you're adding to these kid's lives [the adoption by Steve Jackson] means the subtraction of somebody else that takes a lot of trouble and effort and time to be part of their lives and have them learn to know her and where she lives and be someone that they have as a resource in their lives?" (Comment in brackets added for clarity).

Apparently Judge Hinson felt that what qualified a third party for visitation was the willingness to put time and effort to visit. The Petitioners believe this concept has not demonstrated merit in law or science. In contrast, the

parents raised considerable concern about safety of their children (see the transcripts excerpts contained in the Appendix) under the care of Respondent. The court not only took no steps to ensure safety but completely ignored these concerns. Clearly this case involves the opinion of the judge that visitation is good if a person wants to put forth effort to make it happen versus a contrary opinion of the parents based less on a vague concept and more on the specifics of these children and the Respondent in this case.

In *Troxel v. Granville* the United States Supreme Court stated, concerning the specifics of the Troxel case the following:

> "The decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. See Parham, supra, at 602. In that respect, the court's presumption failed to provide any protection for Granville's fundamental constitutional right to make decisions concerning the rearing of her own daughters."

In the instant case the judge (see the transcript of the hearing contained in the appendix) stated: "So, given all of that, you two are very, very nice and very decent people, and I think that you are coming at this from a parental angle and that parental angle is what is best for

them. I don't know. There is somebody up there in another state that really cares about them enough to spend the time, trouble and effort to do what's in their best interests." This quote makes it clear that this was just a difference of opinion between three people, the judge and two parents, that wanted what was best for the children. The judge clearly believes his opinion prevails, contrary to *Troxel.*

The Petitioners have been unable to distinguish their circumstances from that of Tommie Wynn (Granville). They were not arbitrary in the forming of their opinion that the best interests of their children would not be served by substantial forced absences twice a year from the parents with the Respondent as a specific individual, no matter how much effort she was willing to spend for this visitation. It is not that they objected to occasional supervised visits in Arizona but they continue to feel forced extended absences in an environment they feel is unsafe is not in the best interests of the children. On the other hand the court apparently feels that forced visitation based on a vague principle that peoplewho put forth effort to visit should be rewarded with extended periods of temporary custody and control of the children. The Petitioners feel that a fair assessment of the situation by the Appeals Court of Arizona would have resulted in the same result that the United States Supreme Court extended in *Troxel v. Granville.*

Appeals Court Opinion

In contrast to applying or even dealing with the analysis suggested by *Troxel,* the Appeals Court Opinion consisted as a long and in the opinion of the Petitioners, flawed analysis of the facial constitutionality of ARS § 25-409. Much of this analysis hinges on *Troxel v. Granville* being a plurality opinion applying to the broad Washington statute in contrast to a supposedly more narrow and specific Arizona statute. The Arizona Appeals Court states:

> "In Troxel, no majority opinion emerged. However, six of the justices agreed with the state supreme court that the Washington statute was unconstitutionally overbroad because it allowed 'any person' to petition for forced visitation of a child at 'any time' with the only requirement that the visitation serve the best interests of the child."..... ¶10 Two factors support our conclusion that the Supreme Court's holding in Troxel has no impact on A.R.S. section 25-409. First, although the Court found the Washington statute's language too broad to pass constitutional muster, it refused to find nonparental visitation statutes unconstitutional per se. Id..... ¶11 Second, A.R.S. section 25-409 is much more narrowly drawn than the Washington statute in Troxel....We disagree and

conclude that Arizona's statute satisfies the due process concerns articulated in Troxel."

This analysis of the Arizona Court of Appeals seems more a historical aberration in light of many state appeals court opinions around the nation to the contrary but, specifically, the United States Supreme Court order in *Dodge v. Graville*, US Supreme Court Case No. 00-1300. As such it will not be discussed further at this time. The summary judgment in *Dodge v. Graville* seemed to make it clear that *Troxel v. Granville* does apply to Arizona law as well as Washington law.

The argument of the Appeals Court in the instant case ultimately hinges on the specific language contained in ARS § 25-409 (C), These provisions, contained in the Appendix, are to be used as follows, "In determining the child's best interests the court shall consider all relevant factors." This list includes the motivation of both parents and grandparents, length and duration of the relationship, etc. Only item 3 specifically refers to the parent, all others deal with the surrounding environment of the visitation or others involved in the litigation. There is no indication based on any reasonable use of plain English in any of these factors that indeed the parent's opinion carries any special weight over that of the grandparents seeking court forced visitation. In fact specifically when the court is instructed to determine and presumably consider "The motivation of the person denying visitation" (ARS § 25-409 C 3), there is a completely

parallel requirement using virtually identical wording seeking, "The motivation of the requesting party in seeking visitation" (ARS § 25-409 C 2).

If the assessment of the motivation of the person denying visitation (parent) is equivalent to giving special weight to the parent's opinion then likewise the same assessment for the person requesting visitation (grandparent) must likewise be given special weight leading directly to an oxymoron. You cannot give special weight to both parent and grandparent's opinion in the same case at the same time.

In *Troxel v. Granville* the United States Supreme Court stated, "if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination." Nothing in the current Arizona Statute remotely suggests that parents stand any better than on equal footing with grandparents. No place in the Arizona Appeals Court opinion did the court consider whether "special weight" was in fact given to the parent's opinion in the instant case. In fact, as explained above, their opinion was completely ignored by the court. The Petitioners believe that it would take a heroic effort, reading beyond the statute, to comply with the principles outlined in *Troxel v. Granville*. Clearly no such heroic effort occurred in the instant case at the trial court, Arizona Appeals Court, or in the Arizona Supreme Court.

In reading the history of this case it is clear that this, like ***Troxel***, started as a case of a fit single parent. Ultimately life moved on for this parent and to the

benefit of the children Cristy remarried to provide a second parent. Now Steven finds himself as a step-parent devoid of parental status and responsibility, bound by love for his new wife and her children by her former husband. Ultimately it is arranged for the natural father to voluntarily give up his parental rights and to express his confidence in the benefits of this new intact family holds for his children.

An adoption occurs, and is approved by the court. Suddenly now a long standing litigation affects two instead of one parent. Notwithstanding the issue of the survival of grandparent rights to be discussed below, the court sweeps Petitioner Steven Jackson, without notice or apparent concern, into the judgment against his wife for grandparent visitation. Nowhere in the record can one find any order or hearing granted to Steven. It is assumed by the court, without authority, that by marriage and adoption Steven assumes the legal burdens assessed to his wife. There is no other precedent that the Petitioners know where marriage and adoption encumbers a person with a previous judgment without due process. For this reason alone the Court of Appeals should not have found due process has been served in this case.

Question 2 Does the lack of recognition of a stepparent adoption under ARS §8-117 constitute a violation of equal protection under the US Constitution?

In appeal, the Petitioners raised the issue of what does adoption do to parents' rights. The operative language for that is contained in sec-

tion A of ARS § 8-117 (full statute text contained in Appendix) which states,

> "On entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent thereafter exist between the adopted child and the adoptive parent **as though the child were born to the adoptive parent in lawful wedlock**." (Emphasis added)

The Appeals Opinion contends that the following language contained in ARS § 25-409 negates this promise provided by the Arizona State Legislature.

> "F. All visitation rights granted under this section automatically terminated if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries."

The interpretation of this Arizona Appeals Court, Division I, differs from the previous position taken by the Arizona Appeals Court, Division II in *Guethe v. Truscott*, 1995.AZ.16202 , 912 P.2d 33, 185 Ariz. 29, 206 Ariz. Adv. Rep. 18, where the court stated,

"The Arizona courts, however, have not rec-

> ognized the grandparental relationship as an interest or right which is entitled to protection except in the limited manner provided by the statute at issue. Moreover, public policy requires recognition that an adoption decree creates a new set of relationships with the adoptive parents and **that old ties must be broken.**" (Emphasis added)

Likewise the Appeals Court in the instant case ignores the plain language of the statute which states, "This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries" Specifically the legislature limited this clause to the impact on section ARS § 25-409(F) and specifically excludes it from impacting the overall adoption laws including ARS § 8-117(A). This was not nonsensical oversight on the part of the legislature since this section was passed to encourage the placement of infant children for stranger adoption and was meant to eliminate extended family legal barriers when unwed mothers put their babies up for adoption.

Nonetheless the Petitioners argued before the Arizona Court of Appeals argued that ignoring adoption, as was done in the instant case, was a violation of equal protection principles. The Appeals Opinion recognized that this argument had been made but rejected the argument stating in ¶30, "that differential treatment furthers the legitimate state interest of supporting caring relationships between family members, A.R.S. Section 25-409(F) does not violate the principles of equal protection and

is thus constitutional." This rather limited analysis ignores the plain language of the statute, prior rulings, and most of all does not distinguish between competing states interests.

It is a disputable assertion that the state may have an interest in ordering inter-generational relationships. Justice Thomas in ***Troxel v. Granville*** disputed that assertion in his concurring opinion when he stated, "Here, the State of Washington lacks even a legitimate governmental interest--to say nothing of a compelling one--in second-guessing a fit parent's decision regarding visitation with third parties." The Petitioner believes that such a state interest has not been demonstrated as a matter of science or law and there is substantial evidence to the contrary in both.

However of disputable value to the state court ordered grandparent visitation is there seems to be no dispute that it is in the state's interest to promote adoption. Adoption provides the benefits of the legal commitment of parents to raise a child to majority. It should not be questioned that this commitment is a substantial one, both emotionally and financially. The state, as compensation and inducement for citizens making this commitment, grant to the adoptive parents the same status as if they were natural parents and the children were born to them in wedlock. These children now have birth certificates listing Steven Jackson as their Father, not Robert Thon. These children have a protected

relationship with their Father, Steven Jackson. They can inherit what he owns, they are owed care and protection by the Father until they reach majority, and in Arizona grandparents may not petition an intact family for grandparent visitation. What is there about being a adoptive stepfather that withdraws equal protection under the law to Steven Jackson which is awarded to every other father in the State of Arizona? If the state wanted to allow Steven Jackson to be court ordered to provide visitation to a third party, who is a genetic former legal grandparent should not it have provided the same jeopardy to all intact families?

Where natural parents may have pro-created these children in a casual way, adoptive parents do so with due consideration to the personal commitment they are undertaking and such decisions to do so, especially when children are beyond their infant years should be encouraged and not discouraged by the state.

The instant opinion articulated no reason why this state interest is diminished in the slightest by stepparent adoption. The stepparent, without adoption has no legal commitment to the children. He may leave unfettered by child support or other claims at any time. After adoption this condition is no longer true and both parents have long term commitments to the children. Yet the court would have you believe that the highly questionable state interest in ordering grandparent visitation somehow trumps the

state interest in promoting legally intact families.

Likewise the Court flirts with, without directly stating, the argument that right to differentiate classes of adoptive parents is in the province of the legislature, without regard to equal protection under the law. It may be true that the legislature may or may not choose, as it has in Arizona, to invest the status of a natural parent to an adoptive parent once this step is taken the parent should receive the same 14th amendment rights as a natural parent and thus has a constitutional right to custody and control of his children as defined in *Troxel v. Granville.*

Equal protection principles have been applied to adoption situations for many years. The United State Supreme Court has held that fathers must be given equal protection when the termination of parental rights required prior to adoption with cases such as *Caban v. Mohammed et Ux* 1979.SCT.1578, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 and *Lehr v. Robertson,* 1983.SCT.2578, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614, 51 U.S.L.W. 5010.

The Arizona Appeals Court, Division I, in the instant opinion gives no justification as to why stepparents should be classified in a separate classification from other adoptive parents beyond suggesting if equal protection was extended to stepparent adoptions that would get in the way of ordering fit parents to surrender

their children to third parties for long periods of custody and control in violation of their own personal beliefs as to what is best for their children.

Further assuming the Arizona Appeals Court analysis is correct, it leaves hanging as to exactly under what legal situation is a stepparent who adopts. Is he or she a true parent and when is he or she not a true parent but simply the agent of the natural parent? What happens if the natural parents dies or a divorce occurs? By legislating from the bench the Appeals Court has left an uncertain future for all stepparents. It has allowed the court to place this stepparent under orders issued against the single parent alone without the slightest degree of due process just as a penalty for adopting the child. Why would any stepparent in this scheme want or desire adoption when obligations are undertaken but the right of a true parent is withheld?

Conclusion

The United States Supreme Court should grant this petition for writ of certiorari since to fail to do so would let stand an Arizona Opinion that significantly narrows *Troxel* to only states, laws and circumstances replicating those of *Troxel*. Clearly this case is one of fit parent's opinion as to what is in the best interest's of the children versus a Judge's opinion. The

judge admitted as much in open court. Furthermore the issue of whether a court may simply ignore adoption as a significant and even deciding change in the lives of children is raised. The Opinion of Arizona is clearly stated. Stepparent adoption is not a real adoption but one that obligates the parent, not the state. After adoption, the state is free to act as if no adoption occurred. Both issues in this case, if this petition is denied, will effectively overturn the recent opinion of the United States Supreme Court in *Troxel v. Granville* for a large class of parents and adoptive stepparents nationwide.

RESPECTFULLY SUBMITTED this 13th day of August, 2001.

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Appendix

1. Hinson Order Dated August 19,1999

2. Opinion of Division One of the Arizona Court of Appeals, Jackson vs Tangreen, No. 1 CA-CV 99-0542 (Ariz.App.Div.1 12/26/2000)

3. Denial of Petition for Revew from Arizona Supreme Court, dated May 30,2001

4. ARS §25-409

5. ARS §8-117

6. Exercepts from hearing transcript before Judge Hinson dated July 17, 1998

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

In Re the Marriage of
CHRISTY ANN JACKSON
Petitioner

and ROBERT RAY RHON
Respondent
(SANDI TANGREEN, Grandmother)

No. DO94023

ORDER

On its own motion and without a hearing having been held.

THE COURT FINDS, under the circumstances of this case it is necessary to modify the grandparent rights of visitation previously granted by the Court. The Court's previous order all the paternal grandmother what was referred to as guideline visitation during the same times the natural Father would exercise visitation. The natural father has relinquished his parental rights and consented to the adoption, which has taken place. Continuing to allow the paternal grandmother guideline visitation of these children would put her in a position to unreasonably interfere with the integrity of the family unit which now consists of her grandchildren, former daughter-in-law, and the adoptive father. The

rights of grandparental visitation set forth specifically herein below will enure to the benefit of these children by allowing them to continue to enjoy their association with a paternal grandmother who demonstrates her caring for these children by the investment of the time and effort required to visit them. Acceptance of this visitation by the mother and adoptive father of these children will demonstrate to them that their parents love and accept the entirety of their identities, even that part which consists of their relationship with their paternal grandmother.

The Petitioner, her husband, and the paternal grandmother were previously encouraged by this Court to work together to establish a schedule for a summer visit with the paternal grandmother.

WHEREFORE THE COURT ORDERS: Any such summer visit which has been established and agreed upon by the parties is accepted and approved by this Court. In the absence of such an agreement, the children shall visit with their paternal grandmother for an extended visit this summer beginning not earlier than July 23, 1999 at Noon and ending no later than August 13, 1999 at 5:00 p.m. The grandmother shall provide specific written notice to the parents of her intent to exercise this extended visitation period not later than June 30, 1999. Not less than seventy-two hours prior to her pickup of the children the paternal grandmother shall provide specific written notice of her expected time of arrival to pickup the children. The paternal grandmother

shall provide to the parents an itinerary including specific times, dates, addresses, and telephone numbers of the places at which the children will be during the extended summer visitation. The parents of the children may contact them by telephone daily if desired and available, and the paternal grandmother shall initiate telephone contact between the children and the parents at her expense at least twice weekly such calls may extend up to fifteen minute in length.

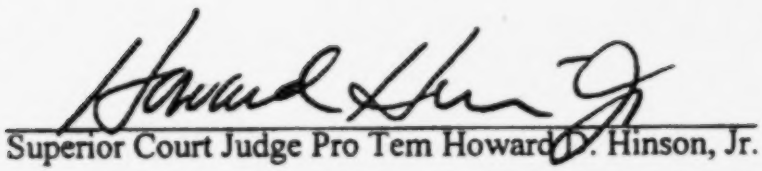
In addition to the extended summer visitation the paternal grandmother shall be entitled to a visit of five days duration during the Christmas break of the children. The natural mother and adoptive father of the children shall determine whether the visit takes place prior to or after Christmas day; in no event shall the visit extend later than December 23rd at 5:00 p.m. or begin earlier than December 27th at 12:00 p.m. Paternal grandmother shall provide notice to the parents of her intent to exercise the five day visitation during Christmas break not later than September 30, 1999. Thereafter the Petitioner shall advise the paternal grandmother in writing not later than October 31, 1999 whether to five day visit shall take place prior to or after Christmas day in accordance with the limitations set forth above.

In the calendar year 2000 the five day visit shall be extended to the paternal grandmother during spring break of the children and she shall not be entitled to the five day visit during Christmas break. Each year the five day visit

shall alternate between the children's spring and Christmas breaks thereafter. Petitioner shall in writing specify to the paternal grandmother each year not later than April 30, 1999 the specific three week period in which the children will visit for the summer.

The paternal grandmother may exercise two weekend visitations per year between the hours of 5:00 p.m. Friday to 5:00 p.m. Sunday so long as such visits occur within a 200 mile radius of the children's residence. Thirty days advance written notice of the exercise of these weekend visits shall be provided to Petitioner; should the proposed weekend be inappropriate the Petitioner shall propose an alternate weekend within one week prior or two weeks after the proposed weekend visit. Such proposal of alternate weekends shall be provided in writing not less than one week after the grandmother's notice of proposed weekend visit. The weekend visits may not take place during the months spring or Christmas break or during the summer months in any given calendar year. The Petitioner shall allow the paternal grandmother telephonic contact with the children to occur no more than once weekly between the hours of 7:00 and 9:00 p.m. on any given evening.

Dated this 19 day of August, 1999



Superior Court Judge Pro Tem Howard D. Hinson, Jr.

Jackson v. Tangreen

No. 1 CA-CV 99-0542 (Ariz.App.Div.1 12/26/2000)

[1] IN THE COURT OF APPEALS STATE OF ARIZONA DIVISION ONE

[2] No. 1 CA-CV 99-0542

[3] 2000.AZ.0042229

[4] December 26, 2000

[5] CHRISTY AND STEVEN JACKSON, WIFE AND HUSBAND, PETITIONERS-APPELLANTS,
V.
SANDI TANGREEN, RESPONDENT-APPELLEE.

[6] Appeal from the Superior Court in Yavapai County Cause No. DO 94-0203 The Honorable Robert M. Brutinel, Judge The Honorable Howard D. Hinson, Jr., Judge Pro Tempore

[7] Jones & Rosenberg Prescott by Kenton D. Jones Attorneys for Petitioners-Appellants Law Offices OF Robert L. FRUGÉ Prescott by Robert L. Frugé Attorney for Respondent-Appellee

[8] The opinion of the court was delivered by: Ryan, Judge

[9] DEPARTMENT C

[10] OPINION

[11] AFFIRMED

[12] ¶1 In this appeal, we again hold that Arizona's grandparent visitation statute, Ariz. Rev. Stat. Ann. ("A.R.S.") § 25-409 (2000), is constitutional. We also hold that the statute does not unconstitutionally distinguish between two-parent adoptions and stepparent adoptions by per-

mitting continuing grandparent visitation when a child is adopted by a stepparent.

[13] BACKGROUND

[14] ¶2 Robert and Christy Thon were married in July 1992. The couple had two children, a boy born in 1992 and a girl born in 1993. In 1994, Christy petitioned the court for dissolution of the marriage, and the couple was later granted a divorce with Christy retaining primary custody of the children. In April 1997, Robert Thon's mother, Sandi Tangreen, petitioned the court for visitation with her grandchildren. After hearing oral argument on the petition, the court granted Tangreen visitation with the children.

[15] ¶3 In February 1998, Christy's new husband, Steven Jackson, petitioned to adopt the two children. Christy and her former husband both consented to the adoption. In July 1998, Tangreen filed a petition for continuation of visitation, which the trial court granted. Steven Jackson's petition to adopt the children was subsequently granted, and the order of adoption was entered in August 1998. The Jacksons then filed a petition to terminate Tangreen's visitation rights, arguing that A.R.S. section 25-409 is unconstitutional. *fn1 The Jacksons appeal from the trial court's denial of their petition to terminate visitation.

[16] DISCUSSION

[17] ¶4 The Jacksons raise several arguments that we distill to two principal issues. First, the Jacksons argue that A.R.S. section 25-409 is unconstitutional on its face because

it impermissibly interferes with their fundamental rights as parents in the care, custody, and control of their children. Second, the Jacksons argue that A.R.S. section 25-409(F) *fn2 conflicts with Arizona's adoption statute, A.R.S. § 8-117(A)(1999), and thus A.R.S. section 25-409(F) impermissibly distinguishes between two- parent adoptions and stepparent adoptions. We conclude that A.R.S. section 25-409 is constitutional. We also conclude that A.R.S. section 25-409(F) does not unconstitutionally distinguish between two-parent adoptions and stepparent adoptions.

[18] The Constitutionality of A.R.S. Section 25-409

[19] ¶5 We review the constitutionality of a statute de novo. See City of Tucson v. Woods, 191 Ariz. 523, 530, 959 P.2d 394, 401 (App. 1997). In conducting that review, we presume that the statute is constitutional and must construe it, if possible, to give it a constitutional meaning. See State Comp. Fund v. Symington, 174 Ariz. 188, 193, 848 P.2d 273, 278 (1993). The party alleging the constitutional violation bears the burden of proving it. Eastin v. Broomfield, 116 Ariz. 576, 580, 570 P.2d 744, 748 (1977). We will declare legislation unconstitutional only if we are clearly convinced that it conflicts with the Arizona or United States Constitution. See State v. Arnett, 119 Ariz. 38, 48, 579 P.2d 542, 552 (1978).

[20] ¶6 In Graville v. Dodge, this court held that Arizona's grandparent visitation stat-

ute, A.R.S. § 25-409, did not unconstitutionally infringe upon a parent's fundamental right to control child rearing. 195 Ariz. 119, 125, ¶ 23, 985 P.2d 604, 610 (App. 1999). We concluded that because A.R.S. section 25-409 "neither substantially interferes with nor heavily burdens parental rights," it need only be rationally related to a legitimate state purpose. Id. at ¶ 24. We then held that A.R.S. section 25-409 was "rationally related to furthering the state's legitimate interest in enabling children to become responsible adults by fostering relationships between grandchildren and their grandparents." Id. at 126, ¶ 27, 985 P.2d at 611.

[21] ¶7 After oral argument in this appeal, the United States Supreme Court issued its decision in Troxel v. Granville, 530 U.S. , 120 S. Ct. 2054 (2000). In Troxel, the Supreme Court affirmed the Washington Supreme Court's ruling that Washington's nonparental visitation statute was unconstitutional. Id. at ___, 120 S. Ct. at 2059. We granted the Jacksons' request for additional briefing on whether the Court's decision in Troxel affected this appeal.

[22] ¶8 In their supplemental brief, the Jacksons contend that our analysis in Graville no longer controls in light of the Supreme Court's decision in Troxel. Tangreen, on the other hand, contends that Troxel's holding is limited to the Washington statute and does not affect the constitutionality of A.R.S. section 25-409. We conclude that Troxel does not affect our holding in Graville.

[23] ¶9 In Troxel, no majority opinion emerged. However, six of the justices agreed with the state supreme court that the Washington statute was unconstitutionally overbroad because it allowed "'any person' to petition for forced visitation of a child at 'any time' with the only requirement that the visitation serve the best interests of the child." Id. (quotations omitted); see also id. at ___, 120 S. Ct. at 2061, 2064 (plurality opinion), 2065 (Souter, J., concurring), 2068 (Thomas, J., concurring). Four of these six justices also found that the Washington statute was unconstitutional as applied. Id. at ___, 120 S. Ct. at 2064.

[24] ¶10 Two factors support our conclusion that the Supreme Court's holding in Troxel has no impact on A.R.S. section 25-409. First, although the Court found the Washington statute's language too broad to pass constitutional muster, it refused to find nonparental visitation statutes unconstitutional per se. Id.

[25] ¶11 Second, A.R.S. section 25-409 is much more narrowly drawn than the Washington statute in Troxel. In contrast to the Washington law, Arizona's nonparental visitation statute is limited to grandparents and great-grandparents. A.R.S. § 25-409(A), (B). In addition, the court may order visitation over parental objections only if the marriage of the parents has been dissolved for at least three months, one of the parents of the child is deceased or missing, or the child was born out of wedlock. Id. at (A)(1)-(3). Further, the statute requires the court

to evaluate "all relevant factors" as well as five specific factors to determine if visitation serves the best interests of the child. Id. at (C)(1)-(5). Thus, A.R.S. section 25-409 stands in stark contrast to the "breathtakingly broad" Washington statute. Troxel, 530 U.S. at ___, 120 S. Ct. at 2061.

[26] ¶12 Nevertheless, the Jacksons argue that certain language in Troxel compels a finding that A.R.S. section 25-409 violates their fundamental due process right to make decisions concerning the raising of their children. We disagree and conclude that Arizona's statute satisfies the due process concerns articulated in Troxel.

[27] ¶13 The Court in Troxel focused on two principle factors in concluding that the Washington statute, as applied, violated the mother's "fundamental right to make decisions concerning the care, custody, and control of her [children]." Id. at ___, 120 S. Ct. at 2063. First, no one alleged and no court found the mother to be unfit. Id. at ___, 120 S. Ct. at 2061. The Court explained that a fit parent is presumed to act in the child's best interests, and thus courts "must accord at least some special weight to the parent's own [visitation] determination." Id. at ___, 120 S. Ct. at 2062. In Troxel, the Washington trial court did not give any special weight to the mother's visitation decisions. Id. at ___, 120 S. Ct. at 2061-62. Instead, the trial court based its decision on its own presumption that third-party visitation would benefit the child, effectively forc-

ing the mother to disprove the trial court's presumption. Id. at ___, 120 S. Ct. at 2062. Second, the mother had assented to some meaningful visitation even before the filing of any visitation petition or subsequent court intervention. Id. at ___, 120 S. Ct. at 2063. Thus, she did not seek to deny visitation altogether; she merely sought to limit it. Id. Nevertheless, the trial court failed to accord significant weight to the mother's prior assent to visitation. Id. These factors, combined with the trial court's "slender findings" in favor of the visitation order, convinced a plurality of the Court that the Washington statute did no more than permit the trial court to substitute its own judgment for that of a fit parent. Id. at ___, 120 S. Ct. at 2064. As a result, the Court concluded that the Washington statute, as applied, "exceeded the bounds of the Due Process Clause." Id. at ___, 120 S. Ct. at 2061, 2063-64.

[28] ¶14 We believe Arizona's statute does not exceed the "bounds of the Due Process Clause." Section 25-409 requires Arizona courts to give weight to the parent's visitation decisions. For example, the court must assess "[t]he motivation of the person denying visitation." A.R.S. § 25-409(C)(3). It must also consider "[t]he motivation of the requesting party" and "[t]he historical relationship, if any, between the child and the person seeking visitation." Id. at (C)(1), (2). Also, the court must assess the amount of visitation requested and determine the impact that the visitation will have on the child's customary activities. Id. at (C)(4). As we concluded in Graville,

these procedural safeguards "show[] that the legislature was conscious of parents' superior right to the custody and care of their children." 195 Ariz. at 127, 985 P.2d at 612 (quoting West v. West, 689 N.E.2d 1215, 1221 (Ill. App. Ct. 1998)). Moreover, as subsections (C)(1) through (C)(4) suggest, our statute applies only in cases in which a parent has denied visitation, not merely limited it. Thus, by applying the statute as written, Arizona courts do not violate the Due Process Clause.

[29] ¶15 Because Troxel does not stand for the proposition that nonparental visitation statutes are per se unconstitutional, and because A.R.S. section 25-409 satisfies the due process concerns identified in Troxel, we reaffirm our holding in Graville that A.R.S. section 25-409 is constitutional.

[30] Arizona's Adoption Statute and A.R.S. Section 25-409(F)

[31] ¶16 The Jacksons' second contention presents two related arguments. First, they claim that A.R.S. section 25-409(F) conflicts with the policy underlying A.R.S. section 8-117(A). Second, the Jacksons assert that A.R.S. section 25-409(F) impermissibly distinguishes between two-parent adoptions and stepparent adoptions. We conclude that the legislature intended that A.R.S. section 25-409(F) supersede the policy behind A.R.S. section 8-117(A) as it relates to grandparent visitation after stepparent adoptions. We also conclude that the legislature rationally distinguished between two-parent adop-

tions and stepparent adoptions in the context of grandparent visitation.

[32] ¶17 We begin our analysis with two principles in mind. First, adoption is a statutorily created concept, one that was unknown at common law. In re Estate of Ryan, 187 Ariz. 311, 312, 928 P.2d 735, 736 (App. 1996); Pima County Juv. Action No. B-7087, 118 Ariz. 437, 438, 577 P.2d 723, 724 (App. 1977), aff'd, 118 Ariz. 428, 577 P.2d 714 (1978). Second, because adoption is "a statutory creation entirely subject to legislation," it is within the legislature's power to "define and regulate adoption." Estate of Ryan, 187 Ariz. at 312, 928 P.2d at 736.

[33] ¶18 Section 8-117 defines the legal relationship between parents and child upon the entry of an order of adoption. After adoption, the relationship between the adopted child and the new parents is the same "as though the child were born to the adoptive parent in lawful wedlock." A.R.S. § 8-117(A). Therefore, the adopted child can inherit property from the child's new parents, and the new parents can inherit property from the adopted child. Id. The relationship between the adopted child and the persons who were his parents before the decree of adoption is severed, and all "legal consequences of the relationship cease to exist, including the right of inheritance." Id. at (B).

[34] ¶19 Under A.R.S. section 25-409(F), visitation granted to grandparents or great-grandparents "automatically terminate[s] if the child has been adopted or placed for adoption."

But, the legislature included a specific exception for "the adoption of the child by the spouse of a natural parent if the natural parent remarries." The Jacksons argue that this exception conflicts with the policy behind A.R.S. section 8-117(A). In our opinion, the legislature legitimately exercised its power to define the status of children in relation to their biological and adoptive families when it amended Arizona's grandparent visitation statute to permit continued grandparent visitation after adoption by a stepparent.

[35] ¶20 When enacted in 1983, the grandparent visitation statute was codified at A.R.S. section 25-337.01 and subsection (D) provided: "[a]ll visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. . . ." 1983 Ariz. Sess. Laws, ch. 109, § 1. This subsection was challenged in In re Marriage of Herreras, 159 Ariz. 511, 768 P.2d 673 (App. 1989), after a grandmother's visitation was automatically terminated following the adoption of her grandchildren by their father's new wife. In affirming, this court found that the legislature had clearly provided for termination of grandparent visitation upon adoption, concluding that "public policy requires recognition that an adoption decree creates a set of new relationships with the adoptive parents and that old ties must be broken." Id. at 512, 768 P.2d at 674 (citing Browning v. Tarwater, 524 P.2d 1135 (Kan. 1974)). *fn3

[36] ¶21 In 1992, the legislature amended A.R.S. section 25- 337.01(D) to add the last sen-

tence, exempting from the provisions of that subsection cases in which the child is adopted by the spouse of the natural parent. *fn4 1992 Ariz. Sess. Laws, ch. 139, § 1. We presume that in so doing, the legislature was aware of our prior interpretation of A.R.S. section 25-337.01(D). See, e.g., Wareing v. Falk, 182 Ariz. 495, 500, 897 P.2d 1381, 1386 (App. 1995) (noting that it is well settled that the legislature is presumed to know existing law when it enacts a statute). We also presume that this amendment was intended to specifically address our interpretation and, in effect, legislatively overrule it. See McCandless v. United S. Assurance Co., 191 Ariz. 167, 174, 953 P.2d 911, 918 (App. 1997) (stating that when the legislature amends an existing statute, the court presumes the legislature intended some change in existing law). Because it is within the legislature's power to define the status of children vis-a-vis their biological and adoptive families, see Estate of Ryan, 187 Ariz. at 313, 928 P.2d at 737, we conclude that the last sentence of A.R.S. section 25-409(F) supersedes the policy expressed in A.R.S. section 8- 117(A) as it relates to grandparent visitation when a stepparent adopts the child of the natural parent.

[37] ¶22 The Jacksons, however, contend that A.R.S. section 25- 409(F) unconstitutionally distinguishes between two-parent adoptions and stepparent adoptions. They argue that A.R.S. section 25-409(F) affords Steven Jackson a "lesser degree" of parenthood by virtue of his adoption of his spouse's minor children as

opposed to a "higher degree" of parenthood he would have had under the statute if he had married someone who was not the children's mother and then adopted the children. In essence, the Jacksons' argument is an equal protection claim that the statute impermissibly classifies adoptive parents by the type of adoption. We conclude that the statute's classification does not violate the Equal Protection Clause of either the Arizona or federal constitution.

[38] ¶23 As discussed, adoptive parents' rights exist only because the legislature created them. Anguis v. Superior Court, 6 Ariz. App. 68, 72, 429 P.2d 702, 706 (1967). Nevertheless, the legislature must act even-handedly when it grants benefits to one group and denies them to another. Tanner Cos. v. Superior Court, 144 Ariz. 141, 146, 696 P.2d 693, 698 (1985). "Thus, the legislature may discriminate between classes only if all those in a given class are treated equally and the classifications are not unreasonable." Id. (emphasis omitted). The court will uphold a law that implicates either a suspect classification or a fundamental right only if the law is necessary to achieve a compelling state interest. Wigglesworth v. Mauldin, 195 Ariz. 432, 438, ¶ 19, 990 P.2d 26, 32 (App. 1999). But, "when a law does not substantially infringe upon a person's fundamental rights we examine the challenged statute under the rational basis standard of review. That is, we will uphold the law if it is reasonably related to a legitimate state objective." Graville, 195 Ariz. at 125, ¶ 22, 985

P.2d at 610 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)).

[39] ¶24 Neither party claims that adoptive parents are a suspect class. But the Jacksons attempt to engraft Troxel's reiteration that parents have a fundamental right to "the care, custody, and control of their children," 530 U.S. at ___, 120 S. Ct. at 2060, onto Arizona's adoption scheme. They urge us to conclude that an adoptive stepparent's statutory right to control the rearing of his adopted child is coextensive with a natural parent's fundamental right. Accordingly, the Jacksons ask us to strictly scrutinize A.R.S. section 25-409(F) and find it unconstitutional because it classifies adoptive parents by the nature of the adoption.

[40] ¶25 The Jacksons' argument fails for two reasons. First, only Justice Thomas would have applied strict scrutiny to the statute in Troxel. See id. at ___, 120 S. Ct. at 2068 (Thomas, J., concurring). None of the other five opinions explicitly stated the level of scrutiny that it applied. Second, Troxel dealt with grandparents' visitation imposed by a court on the natural mother of a child born out of wedlock who wanted to restrict it but not deny it. Thus, the Court was presented only with the extent of nonparental visitation in light of a natural parent's fundamental right in a due process context. Troxel did not address how an adoptive stepparent's statutory rights are like a natural parent's fundamental right in an equal protection context. Therefore, Troxel cannot stand for the prop-

osition that A.R.S. section 25- 409(F) is necessarily subject to strict scrutiny.

[41] ¶26 Because we need not apply strict scrutiny, this court's analysis in Graville still controls. In Graville, we held that because A.R.S. section 25-409 only permits visitation in limited circumstances, it does not substantially infringe on the fundamental parental right to control a child's upbringing. 195 Ariz. at 125, ¶ 23, 985 P.2d at 610. Thus, to be constitutional, A.R.S. section 25-409(F) need only be rationally related to a legitimate state purpose. To succeed in proving A.R.S. section 25- 409(F) unconstitutional, the Jacksons must negate every possible rational basis for permitting grandparent visitation after a child is adopted by the spouse of a natural parent who remarries. See Heller v. Doe, 509 U.S. 312, 320, 324 (1993).

[42] ¶27 The classification in A.R.S. section 25-409(F) survives rational basis scrutiny. In upholding A.R.S. section 25-409 in Graville, we concluded that the state has a legitimate interest in "promoting healthy family relationships that enable children to become well-adjusted, responsible adults," including "the continuation of caring relationships . . . among grandchildren and their grandparents." 195 Ariz. at 125, ¶ 26, 985 P.2d at 610. After a two-parent adoption, however, the state's interest in promoting healthy relationships between grandchildren and their biological grandparents is outweighed by the need to make a clean break with the child's past. Cf. In re Maricopa County Juv. Action No.

JA-502394, 186 Ariz. 597, 599, 925 P.2d 738, 740 (App. 1996)(Kleinschmidt, J., concurring). But this limitation does not prohibit the legislature from rationally concluding that a stepparent adoption is materially different from a two-parent adoption in that a stepparent adoption does not involve the same need to make a clean break with the child's past.

[43] ¶28 The Illinois Supreme Court discussed the diminished need for a clean break in stepparent adoptions in Lingwall v. Hoener, 483 N.E.2d 512, 516 (Ill. 1985). The Lingwall court stated that "[i]n adoptions involving strangers, the primary policy concern has traditionally been with maximizing the pool of potential adoptive parents . . . ." Id. Complete termination of the rights of the natural parents guarantees "that the adoptive parents will have 'the opportunity to create a stable family relationship free from unnecessary intrusion.'" Id. (quoting In re Roger B., 418 N.E.2d 751 (Ill. 1981)). In contrast, "the act of becoming a stepparent most often occurs without regard to adoption and in spite of regular visitations between the child and the noncustodial natural parent." Id. While a subsequent adoption by a stepparent terminates the rights and obligations of the natural parent, "[t]ermination of the parental relationship is . . . a legal fiction since no act of law can nullify a biological relationship." Id. In light of these differences between two-parent and stepparent adoptions, the court found no reason to extend this legal fiction to terminate "a grandparental

relationship unless it is in the child's best interest to do so." Id.

[44] ¶29 Other courts have likewise recognized a diminished need for a clean break in stepparent adoptions. The Iowa Supreme Court reasoned that the

[45] "'fresh start' policy . . . is much less compelling where, as here, the child is adopted only by a stepparent. In a very real sense, in such an adoption, the status of the child changes very little. A natural parent remains a parent. The child's home does not change. The adults caring for him or her are the same. In many cases the child's name will not change. If there is any real change, it is primarily in the status of the adopting parent." In re A.C., 428 N.W.2d 297, 300 (Iowa 1988) (quoting Patterson v. Keleher, 365 N.W.2d 22, 25 (Iowa 1985)); accord Hicks v. Enlow, 764 S.W.2d 68 (Ky. 1989); Kanvick v. Reilly, 760 P.2d 743 (Mont. 1988); Mimkon v. Ford, 332 A.2d 199 (N.J. 1975); Hedrick v. Hedrick, 368 S.E.2d 14 (N.C. Ct. App. 1988); see also In re Marriage of Aragon, 764 P.2d 419 (Colo. Ct. App. 1988); In re Groleau, 585 N.E.2d 726 (Ind. Ct. App. 1992); Howell v. Rogers, 551 So. 2d 904 (Miss. 1989); Rigler v. Treen, 660 A.2d 111 (Pa. Super. Ct. 1995). Accordingly, the legislature could have rationally concluded that grandparent visitation previously permitted by a trial court under A.R.S. section 25-409 could continue after a stepparent adoption even though such visitation would terminate after a two-parent adoption.

[46] ¶30 Because the legislature could have rationally concluded that the distinction between two-parent and stepparent adoptions warrants differential treatment regarding grandparent visitation, and because that differential treatment furthers the legitimate state interest of supporting caring relationships between family members, A.R.S. section 25-409(F) does not violate the principles of equal protection and is thus constitutional.

[47] CONCLUSION

[48] ¶31 We reaffirm our holding in Graville that A.R.S. section 25-409 is constitutional on its face. We further hold that A.R.S. section 25-409(F) supersedes the policy considerations of A.R.S. section 8-117(A) and that it does not unconstitutionally distinguish between two-parent adoptions and stepparent adoptions.

[49] Accordingly, we affirm.

[50] MICHAEL D. RYAN, Judge

[51] CONCURRING:

[52] SUSAN A. EHRLICH, Presiding Judge

[53] JON W. THOMPSON, Judge

Opinion Footnotes

[54] *fn1 Although the Jacksons' motion was labeled a "Motion for Reconsideration," in substance, it was an affirmative petition for termination of Tangreen's visitation rights. Jurisdiction on appeal from the denial of this petition is thus proper under A.R.S. section 12-2101(C),

(E) (1994).

[55] *fn2 Section 25-409(F) reads in part as follows: All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. . . . This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

[56] *fn3 In apparent response to Browning, the Kansas legislature in 1984 amended its grandparent visitation statute to provide that adoption of a child by the spouse of a surviving parent would not defeat the biological grandparent's visitation rights. See Sowers v. Tsamolias, 941 P.2d 949, 951 (Kan. 1997).

Supreme Court
State of Arizona
402 Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3291

Noel K. Dessaint
Kathleen E. Kemply
Clerk of the Court
Chief Deputy Clerk

May 30, 2001

RE: CHRISTY AND STEVEN JACKSON vs SANDI TANGREEN
Arizona Supreme Court No. CV-01-0036-PR
Court of Appeals Division One No. 1-CA-CV 99-0542
Yavapi County Superior Court No. DO 94-0203
GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 23, 2001, in regard to the above-referenced cause:

ORDERED: Petion for Review – Denied
Record returned to the Court of Appeals, Division One, Phoenix, this 30th day of May, 2001.

Noel K Dessaint, Clerk

TO:

Kenton D. Jones, Esq., Jones & Rosenberg
Robert L. Fruge, Esq.
West Publishing Company
Lexus-Nexus
Glen D Clark, Clerk, Court of Appeals, Division One

25-409 . Visitation rights of grandparents and great-grandparents

A. The superior court may grant the grandparents of the child reasonable visitation rights to the child during his minority on a finding that the visitation rights would be in the best interests of the child and any of the following are true:

1. The marriage of the parents of the child has been dissolved for at least three months.

2. A parent of the child has been deceased or has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.

3. The child was born out of wedlock.

B. The superior court may grant the great-grandparents of the child reasonable visitation rights on a finding that the great-grandparents would be entitled to such rights under subsection A if the great-grandparents were

grandparents of the child.

C. In determining the child's best interests the court shall consider all relevant factors, including:

1. The historical relationship, if any, between the child and the person seeking visitation.

2. The motivation of the requesting party in seeking visitation.

3. The motivation of the person denying visitation.

4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.

5. If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

D. If logistically possible and appropriate the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. If a parent is

unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.

E. A grandparent or great-grandparent seeking to obtain visitation rights under this section shall petition for these rights in the same action in which the parents had their marriage dissolved or by a separate action in the county where the child resides if no action for dissolution has been filed or the court entering the decree of dissolution no longer has jurisdiction.

F. All visitation rights granted under this section automatically terminate if the child has been adopted or placed for adoption. If the child is removed from an adoptive placement, the court may reinstate the visitation rights. This subsection does not apply to the adoption of the child by the spouse of a natural parent if the natural parent remarries.

ARS § 8-117. Rights under adoption order

A. On entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent thereafter exist between the adopted child and the adoptive parent as though the child were born to the adoptive parent in lawful wedlock. The adopted child is entitled to inherit real and personal property from and through the adoptive parent and the adoptive parent is entitled to inherit real and personal property from and through the adopted child the same as though the child were born to the adoptive parent in lawful wedlock.

B. On entry of the decree of adoption, the relationship of parent and child between the adopted child and the persons who were the child's parents before entry of the decree of adoption is completely severed and all the legal rights, privileges, duties, obligations and other legal consequences of the relationship cease to exist, including the right of inheritance. This subsection does not apply to communication rights established pursuant to section 8-116.01.

C. If the adoption is by the spouse of the child's parent, the relationship of the child to that parent remains unchanged by the decree of adoption.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPI

In re the Marriage of
CHRISTY ANN JACKSON, Petitioner

and

ROBERT RAY THON, Respondent

DO 94-0203

Before: THE HONORABLE HOWARD D. HINSON, JUNIOR

REPORTER'S TRANSCRIPT OF PROCEEDINGS
PETITION FOR CONTINUATION OF GRANDPARENT'S VISITATION RIGHTS

Prescott, Arizona
July 17, 1998
10:00 o'clock a. m.

PREPARED BY:

M. Lisa Edgar, R.P.R., C.P.,
Court Reporter

PREPARED FOR:

Mr. Kenton Jones, Esq.
Attorney at Law
Record on Appeal

Excerpt starting on page 17 of the transcript. Examination of Cristy Jackson, Petitioner and Mother.

EXAMINATION CONTINUED

By Mr. Jones

Q. You had concern. Can you tell the Court what the concerns were about visitation going on this summer?

A. Their safety.

Q. How is that?

A. Well, last time they went there was winter time an she [Respondent] pulled them on sleds behind her vehicle. My kids are never are on snow and she tied the rope to the sled to the van and pulled the kids. They don't know how to play in snow. If they go flying off they don't know what is going to happen to them.

Q We're talking about what ages of the children?

A They were four and five at that time.

Q Have you had other concerns, anything other than being pulled upon a sled behind the car?

A They were so attached to me they were afraid to leave my shadow because that was the first time they have had to go with her. They had never gone with her. She jumped into their life last year. That was it.

Q So when -- when we hear testimony about long attachments and lengthy periods of visiting with the children, that wasn't true until the order was entered by Judge Brutinel?

A That she got -- I didn't understand.

Q I believe her testimony earlier was there was a long history of a relationship with the children and bonding and visitation.

A No.

Q That's not true?

A She came down one time with her son when her son got them three weeks one time out of their if and my daughter was six months old when I left her father, real father, and she wasn't around.

Q So the first time there was any of this sort of visitation or lengthy period of visitation was last year?

A Last year was the first time they actually had to go out of Bagdad with her.

Q They were four and five years old?

A Yes.

Picking up the transcript on page 50 with the court's concluding remarks

THE COURT: Okay. I spoke to Judge Brutinel about this matter last night before I went home. As I drove home I coincidentally was contemplating exactly what Mr. Fruge [Respondent's Trial Attorney] just commented upon and what you brought up; do you add to these children's lives with a husband and father, of course, who does support and participate everyday and in every way that fathers parent children? Do you add to those children's lives in that way with his extended family and his parents and aunts and uncles.

In doing so, do you then have to detract from the children's lives by taking an erasure and removing someone who is willing to drive the thousands of miles from far away to come down here and spend time with them and invest that, and has invested a continued effort in dealing with you?

But I'm not so sure you were very charitable to her. I'm not trying to criticize her. You don't like her husband or her son, your ex-husband. You couldn't stay married to him, and even she concedes that he turned out to be much less as a father and provider. It is difficult for her to

deal with and not easy for her to let her into her life and children's lives. Those things are understandable. No one, myself included, can criticize her for those difficulties that you have to struggle with.

But, again, you get back to the concept does this addition that you're adding to these kids' lives mean the subtraction of somebody else that takes a lot of trouble and effort and time to be part of their lives and have them learn to know her and where she lives and be someone that they have as a resource in their lives?

These children have finite periods of time and there is only X amount of time time that they can spend with her and that only leaves Y time for everybody else, and that's valid. But at the same time do you add the benefit of your new husband and their new father and at the same time subtract someone else that really cares about them and has been the only one to come forward and take that effort.

We don't have a bunch of other grandparents standing up saying, "I want Guideline visitation too." She has been the only one that has done that, taken the effort and time to do that.

My answer from my position is no, you don't subtract an asset in these children's lives because you have added other assets to the children's lives, but at the same time when we get to the point in the case, if we do, that I have to decide whether Guideline visitation as if you were a parent is appropriate after the adoption, if the adoption takes place, I'm not sure I would

come to the same conclusion.

I'm not so sure Judge Brutinel would either because I think he was trying to say, I believe he was trying to say basically if the father doesn't visit for if he will visit when you make it easy for him then I will give you what he had, but I don't know that it is appropriate to give you what he would have or would enjoy in the future under the new circumstances of these children's lives, and I think that it is appropriate for Judge Brutinel to consider.

I would assert that you should think about that in the context of the adoption proceeding. I think Judge Brutinel will consider, if he grants this adoption, does it mean I'm deducting something from these children's lives because that is implicitly in the best interests of your children, and in making that decision does it meant they no longer interact with their paternal grandmother and those kinds of things?

The dad; I don't think any of us have any concern about that. If he is not willing and able to be a force and factor in these children's lives and take the time, trouble and effort so they know him and interact with him, that's his business and he is the adult.

But by the same token, I don't think it's harmful if you make it easy for him and he comes around the kids; "This is my dad." He is the one who decided they were better off with Mr. Jackson and he is the one that really doesn't ever do anything except when it was easy.

They're going to know that, even at four and

five. They'll have that concept every year until the time they grow up. They're going to know who cared for them, who cared enough to do something and who offered to do things and as far as justification not being around when they needed him.

So, given all of that, you two are very, very nice and very decent people, and I think that you are coming at this from a parental angle and that parental angle is what is best for them. I don't know. There is somebody up there in another state that really cares about them enough to spend the time, trouble and effort to do what's in their best interests.